

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

Case No. 6:08-CR-00001-MC

6:08-CR-60002-MC

6:06-CR-60087-MC

OPINION AND ORDER

RICHARD ALLEN CADWALLADER,

Defendant/Petitioner.

MCSHANE, Judge:

Petitioner, Richard Allen Cadwallader, is currently serving a 204-month sentence imposed pursuant to § 4B1.2(a)(2) of the United States Sentencing Guidelines (“Guidelines”).¹ On June 22, 2016, he filed a motion to vacate or correct his sentence under 28 U.S.C. § 2255, arguing that the principles set forth in *Johnson v. United States*, 135 S. Ct. 2551 (2015), render the language found in the advisory Guidelines provision governing his sentence constitutionally deficient. The Government subsequently moved to dismiss his motion. Petitioner was ordered to show cause on June 21, 2017, but elected to waive any response to the Government’s motion.

This case is easily resolved. In the time since Petitioner filed his motion to vacate or correct his sentence, the Supreme Court has expressly held that “the advisory Guidelines are not subject to vagueness challenges under the Due Process Clause.” *Beckles v. United States*, 137 S. Ct. 886, 892 (2017). As such, the holding in *Johnson* does not apply to the advisory Guidelines and Petitioner therefore cannot “assert” a right newly “recognized” by the Supreme Court. 28 U.S.C. 2255(f)(3). His petition is thus time barred. *See id.*

¹ When Petitioner was sentenced in 2008, the Guidelines were advisory and no longer mandatory. *See United States v. Booker*, 543 U.S. 220 (2005).

For the foregoing reasons, Petitioner's motion to vacate or correct his sentence under 28 U.S.C. § 2255 is DENIED. The Government's motion to dismiss is GRANTED.

It is so ORDERED and DATED this 25th day of September, 2017.

s/ Michael J. McShane

Michael J. McShane

United States District Judge